

REVIEW OF PROPOSED LEGISLATION PURSUANT TO N.C.G.S. 164-43

REPORT #2

**NC SENTENCING AND POLICY ADVISORY COMMISSION
MEMBERSHIP**

Hon. Charlie Brown, Chairman
Chief District Court Judge

Frances Battle
Victim Assistance Network

Hon. Tammy Lee
Association of County Commissioners

Art Beeler, Jr.
Lieutenant Governor's Appointee

Dr. Harvey McMurray
Academic Member

Sheriff James Clemmons, Jr.
Sheriffs' Association

Hon. Allen McNeill
State Representative

Hon. Warren Daniel
State Senator

Hon. James Mixson, III
Association of Clerks of Superior Court

Louise Davis
Community Sentencing Association

Luther Moore
Retail Merchants' Association

Danielle Marquis Elder
Attorney General's Office

Timothy Moose
Department of Public Safety

Hon. Sherri Elliott
District Court Judges' Association

Hon. Fred Morrison, Jr.
Justice Fellowship

Hon. John Faircloth
State Representative

Hon. William Richardson
State Representative

Hon. Milton "Toby" Fitch, Jr.
State Senator

Hon. Bob Steinburg, Sr.
State Senator

Willis Fowler
Post-Release Supervision & Parole Commission

Calvin Suber
Commission Chairman's Appointee

Lindsey Granados
Advocates for Justice

Hon. Michael Waters
Conference of District Attorneys

Hon. R. Gregory Horne
Conference of Superior Court Judges

Patrick Weede
Bar Association

Susan Katzenelson
Private Citizen, Governor's Appointee

Hon. Valerie Zachary
Court of Appeals

Chief Henry King, Jr.
Association of Chiefs of Police

**NC SENTENCING AND POLICY ADVISORY COMMISSION
STAFF**

Michelle Hall

Executive Director

John Madler

Associate Director for Policy, Staff Attorney

Ginny Hevener

Associate Director for Research

Tamara Flinchum

Senior Research & Policy Associate

John King

Senior Research & Policy Associate

Meghan Boyd Ward

Research & Policy Associate

Melissa Lugo

Research & Policy Associate

Jennifer Lutz

Research & Policy Associate

Becky Whitaker

Research & Policy Associate

Shelley Kirk

Administrative Secretary

**P.O. Box 2448
Raleigh, NC 27602
(919) 890-1470
www.NCSPAC.org**

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REPORT ON PROPOSED LEGISLATION PURSUANT TO G.S. 164-43

This report by the Sentencing Commission includes all bills introduced or amended through April 30, 2021. The report is submitted in conformance with the following requirements of G.S. 164-43:

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f) and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see following page for a description of the criteria*). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2021.

These summaries may not reflect the most recent bill amendments or committee substitutes. The date on which each individual summary was reviewed is shown on the bottom left hand corner of each summary page. Changes made after this date are not reflected in this report.

The bills included in this report were reviewed by the Sentencing Commission on April 23 and 30, 2021.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria were established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury, or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property, or society; significant injury to person, property, or society; and serious injury to person, property, or society.

The Commission also assigned misdemeanor offenses to four classes: class A1, class 1, class 2, or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

In 2012 the Commission adopted a separate set of classification criteria to be used for reviewing the proposed classification of homicide offenses. These criteria resemble the Commission's harm-based offense classification criteria but rely upon factors other than harm to evaluate the severity of a homicide offense.

FELONY OFFENSE CLASSIFICATION CRITERIA*

| CLASS | CRITERIA |
|-------|--|
| A | <ul style="list-style-type: none">• Reserved for First Degree Murder <p><i>[Reasonably tends to result or does result in:]</i></p> |
| B | <ul style="list-style-type: none">• Serious debilitating long-term personal injury |
| C | <ul style="list-style-type: none">• Serious long-term personal injury• Serious long-term or widespread societal injury |
| D | <ul style="list-style-type: none">• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling |
| E | <ul style="list-style-type: none">• Serious personal injury |
| F | <ul style="list-style-type: none">• Significant personal injury• Serious societal injury |
| G | <ul style="list-style-type: none">• Serious property loss Loss from the person or the person's dwelling |
| H | <ul style="list-style-type: none">• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal• Personal injury• Significant societal injury |
| I | <ul style="list-style-type: none">• Serious property loss: All other felonious property loss• Societal injury |
| M | <ul style="list-style-type: none">• All other misdemeanors |

* Personal injury includes both physical and mental injury.

Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

| CLASS | CRITERIA |
|--------------|--|
| | (FELONY) |
| A | <ul style="list-style-type: none">• Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation. |
| B | <ul style="list-style-type: none">• Intentional killing with malice. |
| D | <ul style="list-style-type: none">• Intentional killing with a partial legal excuse. |
| E | <ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence with aggravating circumstances. |
| F | <ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence. |
| H | <ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a serious traffic violation. |
| | (MISDEMEANOR) |
| A1 | <ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a traffic violation. |

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
April 30, 2021

| Bill | Short Title | Provision | Proposal | Finding | Commentary | Page |
|--------|--|----------------------|---------------------------|--------------|---|--------------------|
| HB 315 | Arson Law Revisions [Ed. 3] | G.S. 14-58 | E | Inconsistent | Would be consistent with a Class F felony. | 1 |
| | | G.S. 14-59.1 | D | Consistent | | 2 |
| | | G.S. 14-62.3(b) | D | Consistent | | 3 |
| | | G.S. 14-62.3(c) | E | Inconsistent | Would be consistent with a Class F felony. | 4 |
| | | G.S. 14-69.3(c) | F | Consistent | | 5 |
| HB 341 | Protection from Online Impersonation [Ed. 2] | G.S. 14-118.8(b) | H | Consistent | | 6 |
| HB 354 | Hate Crimes Prevention Act [Ed. 1] | G.S. 14-34.11(b) | F | Consistent | | 7 |
| | | G.S. 14-34.11(d)(1) | E | Inconsistent | Would be consistent with a Class B felony. | 8 |
| | | G.S. 14-34.11(d)(2) | E | Consistent | | 9 |
| HB 418 | Threaten LEO or Correctional Officer [Ed. 1] | G.S. 14-277.7A | I | Consistent | | 10 |
| HB 424 | Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1] | G.S. 15A-1340.19B(a) | Parole Eligible | Consistent | | 11 |
| | | G.S. 15A-1340.19B(b) | Parole Eligible | Inconsistent | | 12 |
| HB 510 | Born-Alive Abortion Survivors Protection Act [Ed. 1] | G.S. 90-21.145(a) | D | Inconsistent | Would be consistent with a Class H or I felony. | 13 |
| | | G.S. 90-21.145(a) | D | Inconsistent | Would be consistent with a Class I felony. | 14 |
| | | G.S. 90-21.145(b) | Punished as G.S. 14-17(c) | Consistent | | 15 |

| Bill | Short Title | Provision | Proposal | Finding | Commentary | Page |
|--------|---|------------------|----------------|--------------|---|--------------------|
| HB 531 | Timeshare Act Changes [Ed. 1] | G.S. 93A-58(e) | E | Inconsistent | Would be consistent with a Class I felony. | 16 |
| | | G.S. 93A-68(i) | E | Inconsistent | Would be consistent with a Class I felony. | 17 |
| HB 544 | Revise Animal Fighting Laws [Ed. 1] | G.S. 14-362(a) | I | Consistent | | 18 |
| | | G.S. 14-362(b) | I | Consistent | | 19 |
| | | G.S. 14-362.2(c) | H | Inconsistent | Would be consistent with a Class I felony. | 20 |
| HB 560 | Public Safety Reform [Ed. 1] | G.S. 14-258.4(b) | Mandatory Term | Inconsistent | | 21 |
| | | G.S. 14-258(c) | Mandatory Term | Inconsistent | | 22 |
| HB 576 | Marijuana Justice and Reinvestment Act [Ed. 1] | G.S. 18D-405(a) | E | Consistent | | 23 |
| | | G.S. 18D-405(b) | E | Consistent | | 24 |
| HB 617 | Cannabis Legalization and Regulation [Ed. 1] | G.S. 18D-405(a) | E | Consistent | | 23 |
| | | G.S. 18D-405(b) | E | Consistent | | 24 |
| HB 631 | Sports Wagering [Ed. 1] | G.S. 18C-918(c) | G | Inconsistent | Would be consistent with a Class H felony. | 25 |
| | | G.S. 18C-918(d) | I | Consistent | | 26 |
| HB 699 | Elder Abuse and Neglect/Increase Punishment [Ed. 1] | G.S. 14-32.3(a) | E | Consistent | Would also be consistent with a Class F felony. | 27 |
| | | G.S. 14-32.3(a) | G | Inconsistent | Would be consistent with a Class F or H felony. | 28 |
| | | G.S. 14-32.3(b) | F | Consistent | Would also be consistent with a Class E felony. | 29 |
| | | G.S. 14-32.3(b) | H | Consistent | | 30 |

| Bill | Short Title | Provision | Proposal | Finding | Commentary | Page |
|--------|---|---------------------|---------------------------|--------------|---|--------------------|
| HB 715 | Penalty/Election Law Violation/Board Meetings [Ed. 1] | G.G. 163-20(f) | H | Consistent | | 31 |
| | | G.S. 163-61(f) | H | Consistent | | 32 |
| HB 743 | Remove ID Mark/Increase Punishment [Ed. 1] | G.S. 14-160.1(a) | H | Consistent | | 33 |
| | | G.S. 14-160.1(b) | H | Consistent | | 34 |
| | | G.S. 14-401.4(a) | H | Consistent | | 35 |
| SB 99 | Clarify Law on Theft of Catalytic Converters [Ed. 2] | G.S. 66-424(d) | I | Inconsistent | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 37 |
| SB 335 | Increase Penalty/Disruption of Open Meetings [Ed. 1] | G.S. 14-288.4(c)(2) | I | Inconsistent | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 38 |
| | | G.S. 14-288.4(c)(3) | H | Inconsistent | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 39 |
| SB 405 | Born-Alive Abortion Survivors Protection Act [Ed. 1] | G.S. 90-21.145(b) | Punished as G.S. 14-17(c) | Consistent | | 15 |
| SB 408 | Stop Addiction Fraud Ethics Act of 2021 [Ed. 1] | G.S. 90-113.151(c) | G | Inconsistent | Would be consistent with a Class H or I felony. | 40 |
| | | G.S. 90-113.151(d) | G | Inconsistent | Would be consistent with a Class H or I felony. | 41 |
| | | G.S. 90-113.152(a) | G | Inconsistent | Would be consistent with a Class F, H, or I felony. | 42 |
| SB 433 | Prohibit Online Impersonations [Ed. 1] | G.S. 14-459(b)(1) | D | Inconsistent | Would be consistent with a Class H or I felony. | 44 |
| | | G.S. 14-459(b)(2) | D | Inconsistent | Would be consistent with a Class H or I felony. | 45 |
| SB 439 | Hate Crimes Prevention Act [Ed. 1] | G.S. 14-34.11(b) | F | Consistent | | 7 |
| | | G.S. 14-34.11(d)(1) | E | Inconsistent | Would be consistent with a Class B felony. | 8 |

| Bill | Short Title | Provision | Proposal | Finding | Commentary | Page |
|--------|---|---------------------|----------|--------------|--|--------------------|
| | | G.S. 14-34.11(d)(2) | E | Consistent | | 9 |
| SB 473 | Enhance Local Gov't Transparency [Ed.1] | G.S. 14-234.2 | H | Consistent | | 47 |
| SB 553 | Damage to Real Property/Punishment [Ed. 1] | G.S. 14-27(b)(1) | H | Consistent | | 48 |
| | | G.S. 14-27(b)(1) | F | Inconsistent | Would be consistent with a Class G felony. | 49 |
| | | G.S. 14-27(b)(3) | F | Consistent | | 50 |
| | | G.S. 14-27(b)(4) | D | Inconsistent | Would be consistent with a Class F felony. | 51 |
| SB 605 | North Carolina Farm Act of 2021 [Ed. 1] | G.S. 14-135(d) | G | Inconsistent | Would be consistent with a Class H felony or a misdemeanor depending on the value of the loss. | 52 |
| | | G.S. 14-135(d) | G | Inconsistent | Would be consistent with a Class H felony. | 53 |
| SB 646 | Marijuana Justice and Reinvestment Act [Ed. 1] | G.S. 18D-405(c) | E | Consistent | | 23 |
| | | G.S. 18D-405(c) | E | Consistent | | 24 |
| SB 665 | Prevent Unlicensed Mental Health Facilities [Ed. 1] | G.S. 122C-28 | H | Consistent | Would also be consistent with a Class I felony or a misdemeanor. | 54 |
| SB 688 | Sports Wagering [Ed.1] | G.S. 18C-918(c) | G | Inconsistent | Would be consistent with a Class H felony. | 25 |
| | | G.S. 18C-918(d) | I | Consistent | | 26 |

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 315 – Arson Law Revisions [Ed. 3]

STATUTE

§ 14-58. Punishment for arson.

DESCRIPTION

A person who

1. willfully and maliciously
2. burns
3. the dwelling house or other buildings within the curtilage
4. of another
5. and the dwelling house or other buildings within the curtilage were unoccupied at the time of the burning.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 315 – Arson Law Revisions [Ed. 3] (cont'd)

STATUTE

§ 14-59.1. Burning of jails or prisons.

DESCRIPTION

A person who

1. wantonly and willfully
2. sets fire to or burns
3. or causes to be burned,
4. or aids, counsels, or procures the burning
5. of a penal institution (as defined in G.S. 14-208.6) or its contents.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: HB 315 – Arson Law Revisions [Ed. 1] (This provision did not change in [Ed. 3]) (cont'd) |
|--|

STATUTE

§ 14-62.3. Burning of commercial structure.

DESCRIPTION

Subsection (b):

A person who

1. wantonly and willfully
2. sets fire to or burns or cause to be burned, or aids, counsels, or procures the burning of
3. any commercial structure
4. that is occupied at the time of the burning.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

G.S. 14-62.3 defines the term "commercial structure" to mean any building or structure that is not designed principally for residential purposes.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/19/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: HB 315 – Arson Law Revisions [Ed. 1] (This provision did not change in [Ed. 3]) (cont'd) |
|--|

STATUTE

§ 14-62.3. Burning of commercial structure.

DESCRIPTION

Subsection (c):

A person who

1. wantonly and willfully
2. sets fire to or burn or causes to be burned, or aids, counsels, or procures the burning of
3. any commercial structure
4. that is unoccupied at the time of the burning.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

G.S. 14-62.3 defines the term "commercial structure" to mean any building or structure that is not designed principally for residential purposes.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 03/19/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: HB 315 – Arson Law Revisions [Ed. 1] (This provision did not change in [Ed. 3]) (cont'd) |
|--|

STATUTE

§ 14-69.3. Arson or other unlawful burning that results in serious bodily injury or physical injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician.

DESCRIPTION

Subsection (c):

A person who

1. commits a felony under Article 15 of Chapter 14 of the General Statutes (Arson and Other Burnings) and
2. a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers physical injury while discharging or attempting to discharge official duties
3. on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Under G.S. 14-69.3(b), it is a Class E felony if a person commits a felony under Article 15 of Chapter 14 of the General Statutes and a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers *serious injury* while discharging or attempting to discharge official duties on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties.

Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel, causing physical injury, is a Class I felony (G.S. 14-34.6(a)).

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/19/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 341 – Protection from Online Impersonation [Ed. 2]

STATUTE

§ 14-118.8. Online impersonation.

DESCRIPTION

Subsection (b):

A person who

1. knowingly and without consent
2. impersonates another person
3. through or on a website or by other electronic means
4. for purposes of harming, intimidating, threatening, or defrauding another person, including the misrepresented.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Impersonation of a law-enforcement or other public officer is a Class I felony. (G.S. 14-277(a)(4))

Impersonation of a law-enforcement or other public officer, while falsely carrying out any act in accordance with the authority granted to a law-enforcement officer, is a Class H felony. (G.S. 14-277(b)(5))

Impersonation of a transportation network company driver, during the commission of a separate felony offense, is a Class H felony. (G.S. 14-401.27)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 354/SB 439 – Hate Crimes Prevention Act [Ed. 1]

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subsection (b):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or
(b) attempts to assault a person and inflict serious bodily injury to the person
2. *in whole or in part* because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person *or a person or group associated with that person.* [Italics indicate words added in SB 439.]

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ or that results in prolonged hospitalization.

It is currently an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin (G.S. 15A-1340.16(d)(17)).

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5). In *State v. Floyd*, the NC Supreme Court held that attempted assault is a crime. See 369 N.C. 329, 794 S.E.2d 460 (2016).

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 and in April 2019 in HB 312/SB 209 and each time found it to be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/21

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 354/SB 439 – Hate Crimes Prevention Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subsection (d)(1):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or
(b) attempts to assault a person and inflict serious bodily injury to the person
2. *in whole or in part* because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person *or a person or group associated with that person* and [Italics indicate words added in SB 439.]
3. death results from the offense.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

Voluntary manslaughter is a Class D felony (G.S. 14-18).

Involuntary manslaughter is a Class F felony (G.S. 14-18).

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 and in April 2019 in HB 312/SB 209 and each time found it to be inconsistent with the Homicide Offense Classification Criteria for a Class E felony. The Commission noted each time that the provision would be consistent with the Homicide Offense Classification Criteria for a Class B felony.

FINDINGS



Bill is **consistent** with the Homicide Offense Classification Criteria.



Bill is **inconsistent** with the Homicide Offense Classification Criteria.



Homicide Offense Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class B felony. The Sentencing Commission recommends classifying offenses which result in an intentional killing with malice as Class B felonies.

DATE OF REVIEW: 04/23/21

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|---|
| BILL NUMBER/SHORT TITLE: HB 354/SB 439 – Hate Crimes Prevention Act [Ed. 1] (cont’d) |
|---|

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subsection (d)(2):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or
(b) attempts to assault a person and inflict serious bodily injury to the person
2. *in whole or in part* because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person *or a person or group associated with that person* and *[Italics indicate words added in SB 439.]*
3. the offense includes a violation or attempted violation of any of the following:
 - a. G.S. 14-39 (kidnapping).
 - b. G.S. 14-27.21 (first degree forcible rape).
 - c. G.S. 14-27.22 (second degree forcible rape).
 - d. G.S. 14-27.26 (first degree forcible sexual offense).
 - e. G.S. 14-27.27 (second degree forcible sexual offense).

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ or that results in prolonged hospitalization. It is currently an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim’s race, color, religion, nationality, or country of origin (G.S. 15A-1340.16(d)(17)).

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5). In *State v. Floyd*, the NC Supreme Court held that attempted assault is a crime. See 369 N.C. 329, 794 S.E.2d 460 (2016).

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 and in April 2019 in HB 312/SB 209 and each time found it to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/21

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 418 – Threaten LEO or Correctional Officer [Ed. 1]

STATUTE

§ 14-277.7A. Threats against law enforcement officers; other.

DESCRIPTION

Subsection (b):

A person who

1. knowingly and willfully
2. makes any threat to inflict serious bodily injury upon or kill any other person
3. as retaliation against an officer because of the exercise of that officer's duties,
4. and the threat is received and believed by either the officer or the person being threatened.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

The bill proposes a Class A1 misdemeanor in subsection (a) for a person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill an officer because of the exercise of that officer's duties, when that threat is received and believed by the officer.

Threats against executive, legislative, or court officers, including making a threat against another person in retaliation is a Class I felony. (G.S. 14-16.7(a))

Threats against executive, legislative, or court officers by mail, including making a threat against another person in retaliation is a Class I felony. (G.S. 14-16.7(b))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/21

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 424 – Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1]

STATUTE

§ 15A-1340.19B. Penalty and parole eligibility determination.

DESCRIPTION

Subsection (a):

A person who

1. is convicted of first degree murder and
2. who was under the age of 18 at the time of the offense.

PUNISHMENT RANGE

CURRENT: Life imprisonment with parole or life imprisonment without parole.

PROPOSED: Life imprisonment with parole. Shall be eligible for parole consideration after serving 25 years of imprisonment.

ANALYSIS

Currently, the court determines whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of life imprisonment without parole. (G.S. 15A-1340.19C)

The Sentencing Commission reviewed an identical provision in April 2019 in HB 775 and found it to be consistent with G.S. 164-41.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: HB 424 – Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1] (cont'd) |
|--|

STATUTE

§ 15A-1340.19B. Penalty and parole eligibility determination.

DESCRIPTION

Subsection (b):

A person who

1. is convicted of a crime other than first degree murder,
2. who was under the age of 18 at the time of the offense, and
3. is sentenced to more than 15 years imprisonment.

PUNISHMENT RANGE

CURRENT: Must serve the minimum term imposed, the maximum term imposed may be reduced to, but not below, the minimum term by earned time credits and post-release supervision.

PROPOSED: Shall be eligible for parole consideration after serving 15 years imprisonment.

ANALYSIS

The enactment of Structured Sentencing eliminated early parole release.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 775 and found it to be inconsistent with G.S. 164-41.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 510 – Born-Alive Abortion Survivors Protection Act [Ed. 1]

STATUTE

§ 90-21.145. Penalties.

DESCRIPTION

Subsection (a) (a violation of G.S. 90-21.142):

A person who

1. during an abortion or an attempt to perform an abortion,
2. is a health care practitioner,
3. present at the time the child is born alive, fails to
 - a. exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age; or
 - b. following the exercise of skill, care, and diligence required above, ensure that the child born alive is immediately transported and admitted to a hospital.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Voluntary manslaughter is a class D felony. (G.S. 14-18)

Voluntary manslaughter of an unborn child is a class D felony. (G.S. 14-23.3)

The Sentencing Commission reviewed an identical provision April 2019 in SB 359 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission recommends classifying offenses which result or do result in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission recommends classifying offenses which result in or do result in societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|---|
| BILL NUMBER/SHORT TITLE: HB 510 – Born-Alive Abortion Survivors Protection Act [Ed. 1] (cont'd) |
|---|

STATUTE

§ 90-21.145. Penalties.

DESCRIPTION

Subsection (a) (a violation of G.S. 90-21.143):

A person who

1. is a health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic
2. who has knowledge of a failure to comply with the requirements of G.S. 90-21.132
3. fails to immediately report the failure to comply to an appropriate State or federal law enforcement agency, or both.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Failure to report noncompliance of a sex offender is a Class H felony. (G.S. 14-208.11A)

Concealment of death by failure to notify law enforcement is a Class H felony. (G.S. 14-401.22(a1))

The Sentencing Commission reviewed an identical provision April 2019 in SB 359 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission recommends classifying offenses which result in or do result in societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|---|
| BILL NUMBER/SHORT TITLE: HB 510 (cont'd)/SB 405 – Born-Alive Abortion Survivors Protection Act [Ed. 1] |
|---|

STATUTE

§ 90-21.145. Penalties.

DESCRIPTION

Subsection (b):

A person who

1. intentionally performs or attempts to perform an overt act
2. that kills a child born alive.

PROPOSED OFFENSE CLASS

Punished as under G.S. 14-17(c) for murder.

ANALYSIS

G.S. 14-17(c) provides that it shall constitute murder where a child is born alive but dies as a result of injuries inflicted prior to the child being born alive. This bill would amend G.S. 14-17(c) to also provide that it would constitute murder where a child is born alive but dies as a result of an intentional, overt act performed after the child is born alive. The degree of murder shall be determined as described in subsections (a) (i.e., first degree murder, Class A felony) and (b) (i.e., second degree murder, Class B1 or B2 felony) of this section.

The Sentencing Commission reviewed an identical provision in April 2019 in SB 359 and found it to be consistent with the Homicide Offense Classification Criteria for a Class A felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 531 – Timeshare Act Changes [Ed. 1]

STATUTE

§ 93A-58. Registrar required; criminal penalties; program broker.

DESCRIPTION

Subsection (e):

A person who

1. is a developer or independent escrow agent
2. intentionally
3. fails to comply with the provisions of Article 4 of Chapter 93A concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer who allows the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project is guilty of a Class I felony. (G.S. 93A-40(b))

A time share registrar is guilty of a Class I felony if he or she knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article. (G.S. 93A-58(b))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 531 – Timeshare Act Changes [Ed. 1] (cont'd)

STATUTE

§ 93A-68. Timeshare transfer services.

DESCRIPTION

Subsection (i):

A person who

1. is a transfer service provider, an agent or third-party service provider for the transfer services provider, or an independent escrow agent
2. intentionally
3. fails to comply with the provisions of G.S. 93A-68 concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer who allows the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project is guilty of a Class I felony. (G.S. 93A-40(b))

A time share registrar is guilty of a Class I felony if he or she knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article. (G.S. 93A-58(b))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 544 – Revise Animal Fighting Laws [Ed. 1]

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (a):

A person who

1. instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, causes a person under 18 years of age to be present at, or profits from
2. an exhibition featuring the fighting of a cock.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

Participating as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is a Class 2 misdemeanor. (G.S. 14-362.1)

Participating as a spectator at an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is a Class H felony. (G.S. 14-362.2)

The Sentencing Commission reviewed a substantially similar provision in April 2019 in HB 507 (the age limit was under 16) and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 544 – Revise Animal Fighting Laws [Ed. 1] (cont'd)

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (b):

A person who

1. owns, possesses, trains, buys, sells, offers to buy or sell, or transports
2. a cock
3. with the intent that the cock be used in an exhibition featuring the fighting of that cock with another cock or another animal.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

It is currently a Class 2 misdemeanor to own, possess, or train any animal other than a cock or dog with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal. (G.S. 14-362.1(b))

The Sentencing Commission reviewed a substantially similar provision in April 2011 in HB 395 (owns, breeds, possesses, sells, or trains a rooster, gamecock, or other fighting bird) and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 544 – Revise Animal Fighting Laws [Ed. 1] (cont'd)

STATUTE

§ 14-362.2. Dog fighting and baiting.

DESCRIPTION

Subsection (c):

A person who

1. participates as a spectator at, or causes a person under 18 years of age to be present at
2. an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss (loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property, or loss occasioned by breach of trust, formal or informal), personal injury, or significant societal injury as Class H felonies.

Any person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class I felony. (G.S. 14-362)

Participating as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is a Class 2 misdemeanor. (G.S. 14-362.1)

The Sentencing Commission reviewed a substantially similar provision in April 2019 in HB 507 (the age limit was under 16) and found it to be inconsistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission recommends classifying offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 560 – Public Safety Reform [Ed. 1]

STATUTE

§ 14-258.4. Malicious conduct by prisoner.

DESCRIPTION

Subsection (b):

A person who

1. is a prisoner as defined by statute
2. knowingly and willfully
3. exposes genitalia
4. to an employee
5. while the employee is in the performance of the employee's duties.

PUNISHMENT RANGE

CURRENT: Class I felony.

PROPOSED: Class I felony with a mandatory minimum active term of six months and a maximum term of 12 months.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and corresponding maximum sentences based on the offender's prior record level.

Under Structured Sentencing, the maximum term for a Class I felony is 120% of the minimum term plus nine months.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 560 – Public Safety Reform [Ed. 1] (cont'd)

STATUTE

§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

DESCRIPTION

Subsection (c) Possessing tools for escape:

A person who

1. is a prisoner as defined by statute
2. possesses
3. a letter, weapon, tool, good, article of clothing, device, or instrument
4. to do any of the following:
 - a. effect an escape or
 - b. aide [*sic*] in an assault or insurrection.

PUNISHMENT RANGE

CURRENT: Class H felony.

PROPOSED: Class H felony with a mandatory minimum active term of 12 months and a maximum term of 24 months.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and corresponding maximum sentences based on the offender's prior record level.

FINDINGS



Bill is **consistent** with G.S. 164-41.



Bill is **inconsistent** with G.S. 164-41.



G.S. 164-41 is not applicable.

Note: this sentence is currently available for offenders convicted of a Class H felony who are in Prior Record Levels III through VI.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 576/SB 646 – Marijuana Justice and Reinvestment Act [Ed. 1]; HB 617 – Cannabis Legalization and Regulation [Ed. 1]

STATUTE

§ 18D-405. Unlawful cannabis extraction; penalty.

DESCRIPTION

Subsection (a):

A person who

1. performs solvent-based extractions on cannabis
2. using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol and
3. is not a cannabis product manufacturing facility complying with Chapter 18D of the General Statutes and the Department of Public Safety.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Marijuana is a Schedule VI controlled substance. G.S. 90-94. Possession, manufacture, sale, delivery, and possession with intent to manufacture, sell, or deliver marijuana are all unlawful pursuant to Article 5 of Chapter 90 of the General Statutes, the Controlled Substances Act. Use and possession of hemp extract is lawful if certain criteria are met. (G.S. 90-94.1)

Manufacturing, distributing, dispensing, delivering, purchasing, aiding, abetting, or conspiring to manufacture, distribute, dispense, deliver, purchase or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana on property used for industrial hemp production, or in a manner intended to disguise the marijuana due to its proximity to industrial hemp, is a Class I felony. (G.S. 106-568.57)

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|---|
| BILL NUMBER/SHORT TITLE: HB 576/SB 646 – Marijuana Justice and Reinvestment Act [Ed. 1]; HB 617 – Cannabis Legalization and Regulation [Ed. 1] (cont'd) |
|---|

STATUTE

§ 18D-405. Unlawful cannabis extraction; penalty.

DESCRIPTION

Subsection (b):

A person who

1. extract compounds
2. from cannabis
3. using ethanol
4. in the presence or vicinity of open flame.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Marijuana is a Schedule VI controlled substance. G.S. 90-94. Possession, manufacture, sale, delivery, and possession with intent to manufacture, sell, or deliver marijuana are all unlawful pursuant to Article 5 of Chapter 90 of the General Statutes, the Controlled Substances Act. Use and possession of hemp extract is lawful if certain criteria are met. (G.S. 90-94.1)

Manufacturing, distributing, dispensing, delivering, purchasing, aiding, abetting, or conspiring to manufacture, distribute, dispense, deliver, purchase or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana on property use for industrial hemp production, or in a manner intended to disguise the marijuana due to its proximity to industrial hemp, is a Class I felony. (G.S. 106-568.57)

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 631/SB 688 – Sports Wagering [Ed. 1]

STATUTE

§ 18C-918. Criminal penalties.

DESCRIPTION

Subsection (c):

A person who

1. knowingly
2. attempts to
3. suborn, collude, or otherwise conspire
4. to influence the outcome of any competition or aspect of any competition that is the subject of sports wagering pursuant to Article 9 of Chapter 18C of the General Statutes.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

Obtaining property by false pretenses is Class C felony (amount involves \$100,000 or more) or a Class H felony (amount involves less than \$100,000). (G.S. 14-100)

Obtaining property or services from slot machines by false coins or tokens is a Class 2 misdemeanor. (G.S. 14-108)

Manufacturing, selling, or gifting devices for cheating slot machines is a Class 2 misdemeanor. (G.S. 14-109)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property, or loss occasioned by breach of trust, formal or informal, personal injury, or significant societal injury as Class H felonies.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 631/SB 688 – Sports Wagering [Ed. 1] (cont’d)

STATUTE

§ 18C-918. Criminal penalties.

DESCRIPTION

Subsection (d):

A person who

1. applies for an interactive sports wagering license or service provider license and
2. willfully
3. furnishes, supplies, or otherwise gives
4. false information on the interactive sports wagering license application.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

Willfully giving false information on a voter registration application at the Division of Motor Vehicles is a Class I felony. (G.S. 163-82.19(b))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 699 – Elder Abuse & Neglect/Increase Punishment [Ed. 1]

STATUTE

§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.

DESCRIPTION

Subsection (a) Abuse:

A person who

1. is a caretaker of a disabled or elder adult who is residing in a domestic setting and
2. with malice aforethought,
3. knowingly and willfully:
 - a. assaults,
 - b. fails to provide medical or hygienic care, or
 - c. confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe,
4. and as a result of the act or failure to act the disabled or elder adult suffers serious injury.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Patient abuse and neglect, conduct proximately causing serious bodily injury is a Class F felony. (G.S. 14-32.2(b)(3))

Patient abuse and neglect, conduct proximately causing bodily injury is a Class H felony. (G.S. 14-32.2(b)(4))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury as Class F felonies.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| | |
|---------------------------------|--|
| BILL NUMBER/SHORT TITLE: | HB 699 – Elder Abuse & Neglect/Increase Punishment [Ed. 1] (cont'd) |
|---------------------------------|--|

STATUTE

§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.

DESCRIPTION

Subsection (a) Abuse:

A person who

1. is a caretaker of a disabled or elder adult who is residing in a domestic setting and
2. with malice aforethought,
3. knowingly and willfully:
 - a. assaults,
 - b. fails to provide medical or hygienic care, or
 - c. confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe,
4. and as a result of the act or failure to act the disabled or elder adult suffers injury.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

Patient abuse and neglect, conduct proximately causing serious bodily injury is a Class F felony. (G.S. 14-32.2(b)(3))

Patient abuse and neglect, conduct proximately causing bodily injury is a Class H felony. (G.S. 14-32.2(b)(4))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony or a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies and offenses which reasonably tend to result or do result in personal injury or significant societal injury as Class H felonies.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| | |
|---------------------------------|--|
| BILL NUMBER/SHORT TITLE: | HB 699 – Elder Abuse & Neglect/Increase Punishment [Ed. 1] (cont'd) |
|---------------------------------|--|

STATUTE

§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.

DESCRIPTION

Subsection (b) Neglect:

A person who

1. is a caretaker of a disabled or elder adult who is residing in a domestic setting and,
2. wantonly, recklessly, or with gross carelessness:
 - a. fails to provide medical or hygienic care, or
 - b. confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and
3. as a result of the act or failure to act the disabled or elder adult suffers serious injury.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Patient abuse and neglect, conduct proximately causing serious bodily injury is a Class F felony. (G.S. 14-32.2(b)(3))

Patient abuse and neglect, conduct proximately causing bodily injury is a Class H felony. (G.S. 14-32.2(b)(4))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| | |
|---------------------------------|--|
| BILL NUMBER/SHORT TITLE: | HB 699 – Elder Abuse & Neglect/Increase Punishment [Ed. 1] (cont'd) |
|---------------------------------|--|

STATUTE

§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.

DESCRIPTION

Subsection (b) Neglect:

A person who

1. is a caretaker of a disabled or elder adult who is residing in a domestic setting and,
2. wantonly, recklessly, or with gross carelessness:
 - a. fails to provide medical or hygienic care, or
 - b. confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and
3. as a result of the act or failure to act the disabled or elder adult suffers injury.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Patient abuse and neglect, conduct proximately causing serious bodily injury is a Class F felony. (G.S. 14-32.2(b)(3))

Patient abuse and neglect, conduct proximately causing bodily injury is a Class H felony. (G.S. 14-32.2(b)(4))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: HB 715 – Penalty/Election Law Violation/Board Meetings [Ed. 1] |
|--|

STATUTE

§ 163-20. Meetings of Board; quorum; minutes; violations by the Board.

DESCRIPTION

Subsection (f):

A member of the State Board of Elections who,

1. during an official meeting of the Board,
2. knowingly casts a vote to do either of the following:
 - a. Sanction or set a rule in any election in the State that violates elections law as enacted by the General Assembly.
 - b. Certify any election in the State that was carried out in violation of elections law as enacted by the General Assembly.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

It is a Class I felony for any member serving on the State Board or on any county board of elections, or any employee of the State Board or a county board of elections, to knowingly send or deliver an absentee ballot to any person who has not requested an absentee ballot in accordance with the requirements of Chapter 163 (Elections and Election Laws). (G.S. 163-237(d7))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| | |
|---------------------------------|--|
| BILL NUMBER/SHORT TITLE: | HB 715 – Penalty/Election Law Violation/Board Meetings [Ed. 1] (cont'd) |
|---------------------------------|--|

STATUTE

§ 163-31. Meetings of county boards of elections; quorum; minutes; violations by boards.

DESCRIPTION

Subsection (f):

A member of a county board of elections who,

1. during an official meeting of the board,
2. knowingly casts a vote to do either of the following:
 - a. Sanction or set a rule in any election in the State that violates elections law as enacted by the General Assembly.
 - b. Certify any election in the State that was carried out in violation of elections law as enacted by the General Assembly.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

It is a Class I felony for any member serving on the State Board or on any county board of elections, or any employee of the State Board or a county board of elections, to knowingly send or deliver an absentee ballot to any person who has not requested an absentee ballot in accordance with the requirements of Chapter 163 (Elections and Election Laws). (G.S. 163-237(d7))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 743 – Remove ID Mark/Increase Punishment [Ed. 1]

STATUTE

§ 14-160.1. Alteration, destruction or removal of permanent identification marks from personal property.

DESCRIPTION

Subsection (a):

A person who

1. alters, defaces, destroys or removes
2. the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any item of personal property
3. with the intent thereby to conceal or misrepresent the identity of said item
4. and the personal property was valued at one thousand dollars (\$1,000) or more at the time of the offense.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Under this bill, it remains a Class 1 misdemeanor if the personal property was valued at less than one thousand dollars (\$1,000) at the time of the offense.

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals is a Class H felony when the property damage is \$1,000 or more but less than \$10,000, and is a Class 1 misdemeanor when the property damage is less than \$1,000. (G.S. 14-159.4(c)(1))

Class H Larceny of property worth more than \$1,000 is a Class H felony (G.S. 14-72) and is a Class 1 misdemeanor when the value is \$1,000 or less (G.S. 14-72(a)).

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 743 – Remove ID Mark/Increase Punishment [Ed. 1] (cont'd)

STATUTE

§ 14-160.1. Alteration, destruction or removal of permanent identification marks from personal property.

DESCRIPTION

Subsection (b):

A person who

1. sells, buys or possesses
2. any item of personal property, not his own,
3. on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed
4. for the purpose of concealing or misrepresenting the identity of said item
5. and the personal property was valued at one thousand dollars (\$1,000) or more at the time of the offense.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Under this bill, it remains a Class 1 misdemeanor if the personal property was valued at less than one thousand dollars (\$1,000) at the time of the offense.

Chop shop activity (purchase, etc., a motor vehicle or motor vehicle part knowing the vehicle identification number or part number has been altered, etc.,) is a Class H felony. (G.S. 14-72.7(a)(3))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 743 – Remove ID Mark/Increase Punishment [Ed. 1] (cont'd)

STATUTE

§ 14-401.4. Identifying marks on machines and apparatus; application to Division of Motor Vehicles for numbers.

DESCRIPTION

Subsection (a)

1. A person, firm or corporation who
 - a. willfully removes, defaces, destroys, alters or covers over the manufacturer's serial or engine number or any other manufacturer's number or other distinguishing number or identification mark upon any machine or other apparatus, including but not limited to farm equipment, machinery and apparatus, but excluding electric storage batteries;
 - b. places or stamps any serial, engine, or other number or mark upon such machinery, apparatus or equipment except as provided for in this section; or
 - c. purchases or takes into possession or sells, trades, transfers, devises, gives away or in any manner disposes of such machinery, apparatus, or equipment except by intestate succession or as junk or scrap after the manufacturer's serial or engine number or mark has been willfully removed, defaced, destroyed, altered or covered up unless a new number or mark has been added as provided in this section;
2. if the farm machinery, farm equipment, or farm apparatus was valued at one thousand dollars (\$1,000) or more at the time of the offense.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Under this bill, it remains a Class 1 misdemeanor if the personal property was valued at less than one thousand dollars (\$1,000) at the time of the offense.

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals, when the property damage is \$1,000 or more but less than \$10,000, is a Class H felony and is a Class 1 misdemeanor when the property damage is less than \$1,000. (G.S. 14-159.4(c)(1))

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

Criminal use of counterfeit trademark device is a Class H felony. (G.S. 80-11.1(c))

Chop shop activity (purchase, etc., a motor vehicle or motor vehicle part knowing the vehicle identification number or part number has been altered, etc.,) is a Class H felony. (G.S. 14-72.7(a)(3))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 99 – Clarify Law on Theft of Catalytic Converters [Ed. 2]

STATUTE

§ 66-424. Prohibited activities and transactions.

DESCRIPTION

Subsection (d):

A person who

1. is not a secondary metals recycler (as defined in G.S. 66-420(8))
2. purchases
3. a used catalytic converter that is not attached to a vehicle.

PROPOSED OFFENSE CLASS

Class I felony, second and subsequent offenses (pursuant to G.S. 66-429(a)).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

A first violation of this provision would be a Class 1 misdemeanor pursuant to G.S. 66-429(a).

Misdemeanor receiving or possessing stolen goods (value of goods is less than \$1,000) is Class 1 misdemeanor. (G.S. 14-72)

Felony receiving or possessing stolen goods (value of goods is \$1,000 or more or qualifies under G.S. 14-72(b)) is a Class H felony. (G.S. 14-72)

Receiving or possessing stolen goods represented as stolen is a Class H felony. (G.S. 14-71)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 335 – Increase Penalty/Disruption of Open Meeting [Ed. 1]

STATUTE

§ 14-288.4. Disorderly conduct.

DESCRIPTION

Subdivision (a)(9):

A person who

1. engages in conduct
2. which disturbs the peace or order of an official meeting of a public body as defined in G.S. 143-318.10.

PROPOSED OFFENSE CLASS

Class I felony, second offense (pursuant to subsection (c)).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

Disruption of an official meeting is a Class 2 misdemeanor. G.S. 143-318.17. This bill would repeal that provision.

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 335 – Increase Penalty/Disruption of Open Meeting [Ed. 1] (cont'd) |
|--|

STATUTE

§ 14-288.4. Disorderly conduct.

DESCRIPTION

Subdivision (a)(9):

A person who

1. engages in conduct
2. which disturbs the peace or order of an official meeting of a public body as defined in G.S. 143-318.10.

PROPOSED OFFENSE CLASS

Class H felony, third and subsequent offenses (pursuant to subsection (c)).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Disruption of an official meeting is a Class 2 misdemeanor. G.S. 143-318.17. This bill would repeal that provision.

Disorderly conduct is a Class 2 misdemeanor. G.S. 14-288.4(b).

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 408 – Stop Addiction Fraud Ethics Act of 2021 [Ed. 1]

STATUTE

§ 90-113.151. Truth in marketing.

DESCRIPTION

Subsection (c):

A treatment provider, treatment facility, recovery residence, or third party providing services to any treatment provider, treatment facility or recovery residence that

1. makes a materially false or misleading statement, or provides false or misleading information, about the nature, identity, or location of substance use disorder treatment services or a recovery residence, in advertising materials, on a call line, or on an internet website, or in any other marketing materials or
2. makes a false or misleading statement about the following:
 - a. the treatment provider’s status as an in-network or out-of-network provider.
 - b. the credentials, qualifications, or experiences of persons providing treatment or services.
 - c. the rate of recovery or success in providing services.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or the person’s dwelling as Class G felonies.

Second degree burglary is a Class G felony. (G.S. 14-51)

Common law robbery is a Class G felony. (G.S. 14-87.1)

Obtaining property by false pretenses (amount involved less than \$100,000) is a Class H felony. (G.S. 14-100)

Making a false statement to procure or deny a benefit pursuant to an insurance policy is a Class H felony. (G.S. 58-2-161)

Medical assistance provider fraud is a Class H or I felony. (G.S. 108A-63(e))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result in or do result in societal injury as Class I felonies.

DATE OF REVIEW: 04/23/21

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 408 – Stop Addiction Fraud Ethics Act of 2021 [Ed. 1] (cont'd) |
|--|

STATUTE

§ 90-113.151. Truth in marketing.

DESCRIPTION

Subsection (d):

A person or entity that

1. provides, or directs any other person or entity to provide, false or misleading information about the identity of, or contact information for, any treatment provider or
2. includes false or misleading information about the internet website of any treatment provider, or surreptitiously directs or redirects the reader to another internet website or
3. suggests or implies that a relationship with a treatment provider exists, unless the treatment provider has provided express, written consent to indicate such a relationship or
4. makes a materially false or misleading statement about substance use disorder treatment services.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or the person's dwelling as Class G felonies.

Second degree burglary is a Class G felony. (G.S. 14-51)

Common law robbery is a Class G felony. (G.S. 14-87.1)

Obtaining property by false pretenses (amount involved less than \$100,000) is a Class H felony. (G.S. 14-100)

Making a false statement to procure or deny a benefit pursuant to an insurance policy is a Class H felony. (G.S. 58-2-161)

Medical assistance provider fraud is a Class H or I felony. (G.S. 108A-63(e))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result in or do result in societal injury as Class I felonies.

DATE OF REVIEW: 04/23/21

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 408 – Stop Addiction Fraud Ethics Act of 2021 [Ed. 1] (cont'd) |
|--|

STATUTE

§ 90-113.152. Patient brokering and kickbacks.

DESCRIPTION

Subsection (a):

A person or entity, including a treatment provider, treatment facility, recovery residence, or third party providing services to any such persons or entities that

1. offers to pay anything of value, directly or indirectly, in cash or in kind, or engages in any split-fee arrangement, in any form whatsoever, to induce referral of a patient or patronage to or from a treatment provider or laboratory or
2. solicits or receives anything of value, directly or indirectly, in cash or in kind, or engages in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a treatment provider or laboratory or
3. solicits or receives anything of value, directly or indirectly, in cash or in kind, or engages in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility or
4. aids or abets any conduct that violates subdivisions (1) through (3).

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or the person's dwelling as Class G felonies.

Second degree burglary is a Class G felony. (G.S. 14-51)

Common law robbery is a Class G felony. (G.S. 14-87.1)

Offering a bribe is a Class F felony. (G.S. 14-218)

Soliciting, receiving, offering, or paying remuneration (including kickbacks, bribes, or rebates) for referring an individual or procuring goods, facilities, or services related to the provision of services under the Medical Assistance Program is a Class I felony. (G.S. 108A-63)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

This offense would be consistent with the Offense Classification Criteria for a Class F, H, or I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result in or do result in societal injury as Class I felonies.

DATE OF REVIEW: 04/23/21

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 433 – Prohibit Online Impersonations [Ed. 1]

STATUTE

§ 14-459. Online impersonation.

DESCRIPTION

Subdivision (b)(1):

A person who

1. uses the name or persona of another person
2. without obtaining the other person’s consent
3. a. creates a web page on a commercial social networking site or other internet website or
b. posts or sends one or more messages on or through a commercial social networking site or other internet website
4. with the intent to harm, defraud, intimidate, or threaten any person.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Identity theft is a Class G felony, except it is punishable as a Class F felony: (i) the victim suffers arrest, detention, or conviction as a proximate result of the offense, or (ii) the person is in possession of the identifying information pertaining to three or more separate persons. (G.S. 114-113.20)

Communicating threats is a Class 1 misdemeanor. (G.S. 14-277.1)

Cyberbullying is a Class 1 misdemeanor if the defendant is 18 years of age or older at the time of the offense, or a Class 2 misdemeanor if the defendant is under the age of 18 at the time of the offense. (G.S. 14-458.1)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonable tend to result or do result in personal injury, or in significant societal injury, as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 433 – Prohibit Online Impersonations [Ed. 1] (cont'd) |
|--|

STATUTE

§ 14-459. Online impersonation.

DESCRIPTION

Subdivision (b)(2):

A person who

1. sends an electronic mail, instant message, text message, or similar communication that
2. references a name, domain address, phone number, or other item of identifying information belonging to a person and
3. the communication was sent without obtaining the person's consent
4. with the intent to
 - a. cause a recipient of the communication to reasonably believe that the person authorized or transmitted the communication, and
 - b. harm or defraud the person, and
 - c. solicit a response by law enforcement or other emergency personnel.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

This offense is proposed to be a Class A1 misdemeanor absent the intent to solicit a response by law enforcement or other emergency personnel.

Identity theft is a Class G felony, except it is punishable as a Class F felony: (i) the victim suffers arrest, detention, or conviction as a proximate result of the offense, or (ii) the person is in possession of the identifying information pertaining to three or more separate persons. (G.S. 14-113.20)

Communicating threats is a Class 1 misdemeanor. (G.S. 14-277.1)

Cyberbullying is a Class 1 misdemeanor if the defendant is 18 years of age or older at the time of the offense, or a Class 2 misdemeanor if the defendant is under the age of 18 at the time of the offense. (G.S. 14-458.1)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonable tend to result or do result in personal injury, or in significant societal injury, as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 473 – Enhance Local Gov’t Transparency [Ed. 1]

STATUTE

§ 14-234.2. Public officers or employees financially benefiting from public position.

DESCRIPTION

An elected officer who

1. solicits or receives
2. personal financial gain
3. from the political subdivision for which that elected officer serves
4. by means of intimidation, undue influence, or misuse of the employees of that political subdivision.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Violation of the law governing public officers or employees benefiting from public contracts is a Class 1 misdemeanor. (G.S. 14-234)

Misuse of confidential information by an officer or employee of the State or an officer or employee of any of its political subdivisions to acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected such information is a Class 1 misdemeanor. (G.S. 14-234.1)

Embezzlement of state property by public officers or employees is a Class C felony (amount \$100,000 or greater) or a Class F felony (amount less than \$100,000). (G.S. 14-91)

Embezzlement of funds by public officers or trustees is a Class C felony (amount \$100,000 or greater) or a Class F felony (amount less than \$100,000). (G.S. 14-92)

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|---|
| BILL NUMBER/SHORT TITLE: SB 553 – Damage to Real Property/Punishment [Ed. 1] |
|---|

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subsection (b)(1):

A person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property whatsoever, either of a public or private nature and
4. the amount of repairs necessary to return the property to its condition before the act, or the property loss (including fixtures or improvements) is one thousand dollars (\$1,000) or more, but less than ten thousand dollars (\$10,000).

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Injury to real property is a Class 1 misdemeanor. G.S. 14-127. This bill would amend that statute.

Larceny (value of more than \$1,000) is a Class H felony. (G.S. 14-72)

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals (property damage \$1,000 or more but less than \$10,000) is a Class H felony. (G.S. 14-159.4(c)(1))

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 553 – Damage to Real Property/Punishment [Ed. 1] (cont'd) |
|--|

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subsection (b)(1):

A person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property whatsoever, either of a public or private nature and
4. the amount of repairs necessary to return the property to its condition before the act, or the property loss (including fixtures or improvements) is ten thousand dollars (\$10,000) or more.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Injury to real property is a Class 1 misdemeanor. G.S. 14-127. This bill would amend that statute.

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals (property damage \$10,000 or more) is a Class F felony. (G.S. 14-159.4(c)(1))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class G felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or the person's dwelling as Class G felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 553 – Damage to Real Property/Punishment [Ed. 1] (cont'd) |
|--|

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subsection (b)(3):

A person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property whatsoever, either of a public or private nature
4. resulting in serious bodily injury (as defined in G.S. 14-32.4) to another person.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Injury to real property is a Class 1 misdemeanor. G.S. 14-127. This bill would amend that statute.

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals (person suffers serious bodily injury) is a Class F felony. (G.S. 14-159.4(c)(3))

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

| |
|--|
| BILL NUMBER/SHORT TITLE: SB 553 – Damage to Real Property/Punishment [Ed. 1] (cont'd) |
|--|

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subsection (b)(4):

A person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property whatsoever, either of a public or private nature
4. resulting in the death of another person.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

Injury to real property is a Class 1 misdemeanor. G.S. 14-127. This bill would amend that statute.

Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals (results in death of another) is a Class D felony. (G.S. 14-159.4(c)(4))

FINDINGS

Bill is **consistent** with the Homicide Classification Criteria.

Bill is **inconsistent** with the Homicide Classification Criteria.

Homicide Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence as Class F felonies.

DATE OF REVIEW: 04/23/2021

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 605 – North Carolina Farm Act of 2021 [Ed. 1]

STATUTE

§ 14-135. Larceny of timber.

DESCRIPTION

Subdivision (a)(1):

A person who

1. knowingly and willfully
2. cuts down, injures, or removes
3. any timber owned by another person
4. a. without the consent of the owner of the land or the owner of the timber or
b. without a lawful easement running with the land.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

Under current law, cutting, injuring, or removing another's timber is punished as larceny under G.S. 14-72, as a Class H felony if valued at more than \$1,000 and a Class 1 misdemeanor if valued at less than \$1,000. G.S. 14-135. This bill would repeal that provision.

Larceny of ungathered crops is a Class H felony. (G.S. 14-78)

Larceny of horses, mules, swine, or cattle is a Class H felony. (G.S. 14-81(a))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony or a misdemeanor, depending on the value of the loss. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property, or loss occasioned by breach of trust, formal or informal, personal injury, or significant societal injury as Class H felonies.

DATE OF REVIEW: 04/23/2021

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 605 – North Carolina Farm Act of 2021 [Ed. 1] (cont'd)

STATUTE

§ 14-135. Larceny of timber.

DESCRIPTION

Subdivision (a)(2):

A person who

1. buys timber directly from the owner of the timber and
2. fails to make payment in full to the owner by
 - a. the date specified in the written timber sales agreement or
 - b. if there is no such agreement, 60 days from the date that the buyer removes the timber from the property.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

Under current law, cutting, injuring, or removing another's timber is punished as larceny under G.S. 14-72, as a Class H felony if valued at more than \$1,000 and a Class 1 misdemeanor if valued at less than \$1,000. G.S. 14-135. This bill would repeal that provision.

Larceny of ungathered crops is a Class H felony. (G.S. 14-78)

Larceny of horses, mules, swine, or cattle is a Class H felony. (G.S. 14-81(a))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property, or loss occasioned by breach of trust, formal or informal, personal injury, or significant societal injury as Class H felonies.

Note: The elements of this offense do not indicate any intent to deprive the owner of payment.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 665 – Prevent Unlicensed Mental Health Facilities [Ed. 1]

STATUTE

§ 122C-28. Penalties.

DESCRIPTION

A person who

1. operates
2. a licensable facility
3. without a license.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Currently, each day's operation of a licensable facility without a license is a separate Class 3 misdemeanor. G.S. 122C-28.

Practicing medicine or surgery without a license is a Class 1 misdemeanor. (G.S. 90-18(a))

Practicing medicine or surgery without a license while falsely representing himself or herself as licensed is Class I felony. (G.S. 90-18(a))

Willfully operating a childcare facility without a current license is a Class I felony. (G.S. 110-103(b)(1))

Establishing, conducting, managing, or operating a nursing home without a license is a Class 3 misdemeanor. (G.S. 131E-109(a))

Owning or operating an ambulatory surgical facility without a license is a Class 3 misdemeanor. (G.S. 131E-151)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

This offense would also be consistent with the Offense Classification Criteria for a Class I felony or a misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/30/2021

IMPACT ANALYSIS NOT REQUESTED YET